

REMARKS

The Office action mailed on 31 March 2005 (Paper No. 03172005) has been carefully considered. Allowance of claims 6 through 8, as indicated in paragraph 3 of the Office action, is noted with appreciation.

Status of Claims

Claims 6 through 10 are pending in the application. Claims 6 through 8 are allowed.

Double Patenting

Claims 9 and 10 are *provisionally* rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 90 and 120 of co-pending Serial No. 08/720,070. The Examiner states that:

“It is understood that these claims have been filed for the purposes of interference and are copied claims, however, claims 90 and 120, which correspond to the instant claims 9 and 10, are still pending in co-pending application 08/720,070, thus necessitating this rejection.”

This provisional rejection is improper under long-standing U.S. patent practice. Specifically, the customary U.S. practice is, as stated in the *Manual of Patent Examining Procedure* (MPEP) §804 I. B, which states that:

“If the ‘provisional’ double patenting rejection in one application is the *only* rejection

remaining in that application, the examiner should *then withdraw that rejection* and permit the application to issue as a patent”

Under this guidance of the *Manual*, this rejection was unnecessary; consequently, the delay in completion of the examination of this application caused by issuance of Paper No. 03172005 could have been avoided by the Office. The Examiner should withdraw the rejection of claim 9 and 10, and permit this application to issue. There is therefore, no basis under U.S. law to maintain this rejection, and no reason to further delay the completion of the examination. Such action is respectfully requested.

It is submitted that the claims of this application are all in condition for immediate allowance, and early issuance thereof is solicited. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

PETITION FOR AN EXTENSION OF TIME

Pursuant to 37 C.F.R. §1.136(a), please extend the time for responding to the first Office action mailed on 31 March 2005 (Paper No. 03172005), **for two month to and through 31 August 2005**. The Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of \$225.00 (SMALL ENTITY).

Should other fees be incurred, the Commissioner is also authorized to charge

Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. E. Bushnell", written over a horizontal line.

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